

Order

Michigan Supreme Court
Lansing, Michigan

February 1, 2005

ADM File No. 2004-11

Amendment of
Rule 6.445 of the
Michigan Court Rules

Clifford W. Taylor
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Justices

On order of the Court, notice of the proposed changes and an opportunity to comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 6.445 of the Michigan Court Rules is adopted, effective May 1, 2005.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 6.445 Probation Revocation

(A)-(G) [Unchanged.]

(H) Review.

(1) In a case involving a sentence of incarceration under subrule (G), the court must advise the probationer on the record, immediately after imposing sentence, that

(a) the probationer has a right to appeal, if the underlying conviction occurred ~~at a contested hearing~~ as a result of a trial, or

(b) the probationer is entitled to file an application for leave to appeal, if the underlying conviction was the result of a plea of guilty or nolo contendere.

(2) [Unchanged.]

Staff Comment: The February 1, 2005, effective May 1, 2005, amendment of MCR 6.445(H), effective May 1, 2005, requires a sentencing judge to advise a probationer whose probation is revoked that the probationer is entitled to appeal by right if the probationer's underlying conviction resulted from a trial. Where the underlying conviction resulted from a plea of guilty or nolo contendere, the probationer would be entitled to file an application for leave to appeal.

The staff comment is not an authoritative construction by the Court.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.



February 1, 2005 Stephen J. Markman
Deputy Clerk